

1969 Senate Bill 600

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CHAPTER 398, LAWS OF 1969

AN ACT to amend 645.21 (1) and 645.31 (5); and to create chapter 617 of the statutes, relating to insurance holding companies and intercorporate transactions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Chapter 617 of the statutes is created to read:

CHAPTER 617.

**REGULATION OF INSURANCE HOLDING COMPANIES AND
INTERCORPORATE TRANSACTIONS RELATING TO INSURERS.**

617.01 CONSTRUCTION AND PURPOSE. (1) CONSTRUCTION. This chapter shall be liberally construed to achieve the purpose of sub (2), which shall constitute an aid and guide to interpretation but not an independent source of power.

(2) PURPOSE. The purpose of this chapter is to protect the interests of insureds, stockholders and of the public against intercorporate transactions among affiliates that may affect the solidity of insurers authorized to do business in this state or otherwise be detrimental to protected interests.

617.02 DEFINITIONS. In this chapter:

(1) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. It has the same meaning in the terms "controlling", "controlled by" and "under common control with". There is a rebuttable presumption of control if a person directly or indirectly owns, holds with the

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power to vote or holds proxies to vote more than 10% of the voting securities of another person, except that no person shall be presumed to control another person solely by reason of being an officer or director of that person.

(2) An "affiliate" of a person means any other person who controls, is controlled by, or is under common control with, the first person. Without regard to control through ownership, a corporation is an affiliate of another corporation if substantially the same group of persons manage the two corporations.

617.03 EXEMPTIONS. The commissioner may exempt any specified person or class of persons from this chapter or any provisions thereof, when he deems such exemption consistent with the purposes of this chapter and in the public interest.

617.11 REPORTS ON AFFILIATES. (1) INFORMATION REQUIRED. Except as provided under sub. (2), each insurer authorized to do business in this state shall report to the commissioner the names and home office addresses of all its affiliates together with such information as the commissioner requires about their capital structure, financial condition, ownership and management and, to the extent that any insurer authorized to do business in this state is involved, business relationships including any of the transactions under s. 617.21 (2).

(2) EXEMPTION FOR CERTAIN NONDOMESTIC INSURERS. A foreign or alien insurer which in its domiciliary state is subject to laws or rules substantially similar to subs. (1), (3) and (4) need not report under those subsections unless the commissioner specifically orders it to do so.

(3) REPORT FOR AFFILIATES. One insurer may report on behalf of all affiliated insurers if it provides all the information that would be required if each insurer reported separately.

(4) INSURERS ALREADY AUTHORIZED. If an insurer already authorized to do business in this state has or later acquires affiliates, it shall report under sub. (1) within 60 days after the effective date of this chapter or within 15 days after the insurer acquires the affiliate, whichever is later. The commissioner may extend the time for a reasonable period.

(5) CONSENT TO JURISDICTION. Every insurer authorized to do business in this state shall promptly submit to the commissioner a statement from each of its affiliates which owns stock in the insurer either directly or through intermediaries, or which is a party to any transaction that the insurer has to report under s. 617.21, to the effect that the affiliate agrees to be subject to the jurisdiction of the commissioner and the courts of this state for the purposes of this chapter. The commissioner may by rule require that such statements be submitted for other classes of affiliates if he finds that the interests of policyholders or the public so require.

617.12 REPORTS AND REPLIES BY PERSONS SEEKING CONTROL OF DOMESTIC INSURERS. Any person attempting to acquire control over a domestic insurer shall be subject to the same duties with respect to reports and replies to the commissioner as are provided by law for the insurer, to the extent reasonably necessary to carry out the purposes of this chapter, and shall be subject to the jurisdiction of the commissioner and the courts of this state for the enforcement of such duties.

617.21 TRANSACTIONS WITH AFFILIATES. (1) GENERAL REQUIREMENTS FOR TRANSACTIONS. No transaction shall be entered into between an insurer authorized to do business in this state and any affiliate unless:

(a) The transaction at the time it is entered into is reasonable and fair to the interests of the insurer; and

(b) The books, accounts and records of each party to the transaction are kept in a manner that clearly and accurately discloses the nature and details of the transaction and in accordance with generally accepted ac-

counting principles permits ascertainment of charges relating to the transaction.

(2) **TRANSACTIONS OF DOMESTIC INSURERS SUBJECT TO DISCLOSURE.** The commissioner may by rule require that any of the following transactions between a domestic insurer and any affiliate be reported to him at least a specified period of time, not exceeding 30 days, prior to their effective date:

(a) Sales, purchases, exchanges, loans or extensions of credit, or investments, involving in any single transaction or group of related transactions more than one-half of one per cent of the insurer's admitted assets as of December 31 next preceding;

(b) Reinsurance treaties or agreements;

(c) Service contracts and cost-sharing arrangements except for cost allocation arrangements based upon generally accepted accounting principles;

(d) Guarantees or undertakings for the benefit of an affiliate which expose the insurer's assets to liability, whether contingent or not, other than insurance contracts entered into in the ordinary course of the insurer's business;

(e) Management contracts; and

(f) Any material transaction, specified by rule, which may adversely affect the interests of insureds, stockholders or the public.

(3) **DISAPPROVAL.** The commissioner may, within the period prescribed in sub. (2), disapprove any transaction reported under sub. (2) if he finds that it would violate the law or would be contrary to the interests of insureds, stockholders or the public.

(4) **TRANSACTIONS OF NONDOMESTIC INSURERS SUBJECT TO DISCLOSURE.** The commissioner may require by rule that any or all of the transactions under sub. (2) made between a foreign or alien insurer required to report under s. 617.11 and any affiliate, so far as not reported under s. 617.11, be reported to him within a specified time, not less than 15 days after the end of the month in which they became effective. The commissioner may by rule specify a shorter period, not less than 5 days, for reporting classes of transactions where prompt reporting is necessary to achieve the purposes of this chapter.

(5) **DIVIDENDS.** This section shall not apply to dividends.

617.22 DIVIDENDS AND OTHER DISTRIBUTIONS. (1) **GENERAL.** Any action by the board of directors of a stock insurance corporation authorized to do business in this state authorizing any distribution to shareholders other than a stock dividend shall be reported to the commissioner in writing. No payment may be made until at least 30 days after such report.

(2) **NEW CORPORATIONS.** For 5 years after the initial issuance of a certificate of authority, no payment may be made under sub. (1) until at least 45 days after the report. The commissioner may extend the waiting period an additional 45 days by giving notice to the corporation not less than 5 days before expiration of the first 45-day period.

(3) **EXEMPTIONS.** If sub. (2) is inapplicable, no report need be made under sub. (1) of a distribution that is no more than 1⁵/₂% larger than for the corresponding period in the previous year.

(4) **SPECIAL EXEMPTION FOR CERTAIN NONDOMESTIC INSURERS.** A foreign or alien insurer which does not have to report under s. 617.11 is only required to report dividends if so directed by the commissioner.

617.23 LIABILITY OF AFFILIATES. (1) **RIGHT OF RECEIVER TO RECOVER DIVIDENDS PAID.** If an order for the liquidation, rehabilitation or conservation of an insurer authorized to do business in this state is entered un-

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der ch. 645, the receiver appointed under such order shall have a right to recover on behalf of the insurer the amount of distributions other than stock dividends paid by the insurer on its capital stock at any time during the 5 years preceding the petition for liquidation, rehabilitation or conservation, subject to the limitations of subs. (2) to (4).

(2) **DIVIDEND PAYMENTS RECOVERABLE.** No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill the obligations to claimants under its insurance contracts.

(3) **PERSONS LIABLE.** (a) *Affiliates at time of payment.* Any person who was an affiliate of the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received.

(b) *Affiliates at time of declaration of distribution.* Any person who was an affiliate of the insurer at the time the distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately.

(c) *Joint and several liability.* If under pars. (a) and (b) 2 persons are liable with respect to the same distributions they shall be jointly and severally liable.

(4) **AGGREGATE LIMITATION.** The maximum amount recoverable under this section shall be:

(a) The amount needed in excess of all other available assets to pay all claims under the receivership.

(b) Reduced by any amount already paid to receivers under similar laws of other states.

(5) **SECONDARY LIABILITY.** If any person liable under sub. (3) is insolvent, all its affiliates that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

SECTION 2. 645.21 (1) of the statutes is amended to read:

645.21 (1) Whenever the commissioner has reasonable cause to believe, and determines, after a hearing held as prescribed in sub. (3), that any insurer has committed or engaged in, or is committing or engaging in or is about to commit or engage in any act, practice or transaction, or is in or is about to get into a situation that would subject it to formal delinquency proceedings under this chapter, he may make and serve upon the insurer and any other persons involved, such orders other than seizure orders under ss. 645.22 and 645.23 as are reasonably necessary to correct, eliminate or remedy such conduct, condition or ground. If the order is for a restoration of or addition to capital, it shall be carried out as provided in s. 200.06.

SECTION 3. 645.31 (5) of the statutes is amended to read:

645.31 (5) That control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in one or more persons ~~found by the commissioner after notice and hearing to be~~ who are dishonest or untrustworthy.

Approved February 5, 1970.